IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4765 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

RAJENDFRASINH AMARSINH RATHOD

Appearance:

MR ASHISH M DAGLI for the Petitioner.

MR MUKESH H RATHOD for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 18/06/2002

ORAL JUDGEMENT

Rule. Mr.Upadhyay waives service of rule on behalf of the respondent.

With the consent of the parties, the matter is heard today finally.

The respondent-workman had raised an Industrial Dispute, which was referred to the Labour Court, Himatnagar and numbered as Reference (LCH) No.245 of 1996. The grievance of the concerned workman was that without any reason in an arbitrary manner, his services were terminated with effect from 24.11.1990. Before terminating his services, no procedure under the Industrial Disputes Act was followed in any manner. The Labour Court, by the impugned order, passed an order of reinstatement with full back wages.

On behalf of the S.T. Corporation, it was argued by Mr.Dagli that the respondent-workman was appointed on a part-time basis at Khedbrahma as he was supposed to look after certain goods lying in the said depot and that it was purely on temporary basis that the appointment was given. According to him, that work is no longer in existence. Therefore, the Corporation was required to terminate the services of the respondent-workman.

I have heard Mr.Dagli for the petitioner and Mr. Upadhyay for the respondent-workman. I have also gone through the Award of the Labour Court. It is not in dispute that since last for more than four years, the concerned workman was serving on part-time basis. There is nothing on record to show that he was asked to do only a particular type of work. Mr. Dagli submitted that in the appointment order it is mentioned that the workmen is appointed only till the construction work is in progress. The Labour Court has found that the Management has not led any evidence to show that the concerned workman was appointed solely for the Project in question. It has been found that even after the Project work was over, the S.T. Corporation had taken the services of the concerned workman as a part-time Watchman. That observation made by the Labour Court is at page 17 of the compilation. Under the circumstances, it is found that the provision of Section 2(oo) of the Industrial Disputes Act is not applicable since the services of the workman were continued subsequently and work was taken from him. Under these circumstances, it was found that the Corporation acted illegally in not complying with the provisions of Section 25-F of the Act.

Considering the reasoning given by the Labour Court, in my view, no interference of this Court is called for so far as the order of reinstatement is concerned. The Labour Court has granted full back wages and Mr.Upadhyay has fairly conceded that since the concerned workman is badly in need of job, he is ready to

forgo 50% of the back wages.

In view of the concession of Mr.Upadhyay, the order of the Labour court is modified and, instead of full back wages for the interim period, the respondent-workman will be entitled to have 50% back wages for the interim period. It is needless to say that the concerned workman will be entitled to his regular salary from the date of the order of the Labour Court.

Subject to the said modification, as indicated above, rest of the Award of the Labour Court is confirmed. The Corporation is directed to reinstate the respondent-workman within a period of one month from today. It is needless to say that the reinstatement is to be given as per the direction of the Labour Court.

The petition is partly allowed only to the aforesaid extent. Rule is made absolute to the aforesaid extent. No costs.

18th June, 2002 (P.B. Majmudar, J.)

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(apj)